

TITLE 327 WATER POLLUTION CONTROL BOARD

PROPOSED RULE AS PRELIMINARILY ADOPTED WITH IDEM'S SUGGESTED CHANGES INCORPORATED #01-51 (WPCB)

DIGEST

Amends 327 IAC 5-4-3 and adds 327 IAC 15-15. Under the Clean Water Act, concentrated animal feed operations (CAFOs) are point sources subject to the National Pollutant Discharge Elimination System (NPDES) permit process. This requirement is found in federal regulations at 40 CFR 122.23(a). The term "CAFO" is defined in 40 CFR 122. This language has been adopted in Indiana and is found in the Indiana Administrative Code at 327 IAC 5-4-3 concerning special NPDES programs. Based on a decision from the United States District Court for the Southern District of Indiana, the Indiana Department of Environmental Management (IDEM) is required to select one of three options for implementing NPDES permits for CAFOs in Indiana. IDEM believes that development of a general permit rule is the most time and resource effective means to comply with this court order. Further, amendments to the federal rules have occurred that require IDEM to update its existing rules.

IDEM has a separate program to regulate confined feeding operations (CFOs). This program is required under IC 13-18-10. However, the requirements of that program do not, in all instances, meet the requirements for a NPDES permit under federal law. IDEM believes the most effective way to address the issue of federal NPDES requirements of the Clean Water Act is in a separate rulemaking that considers all the alternatives available for compliance with the federal requirements.

IDEM has proposed amendment of rule language at 327 IAC 5-4-3 and drafted new rule language for NPDES general permits for CAFOs at 327 IAC 15-15. Effective thirty (30) days after filing.

HISTORY

First Notice of Comment Period: March 1, 2001, Indiana Register (24 IR 1976).
Second Notice of Comment Period and Notice of First Hearing: February 1, 2003 (26 IR 1737).
First Hearing: April 9, 2003.
Change in Hearing Notice: May 1, 2003 (26 IR 2645).
First Hearing: May 8, 2003.
Change in Hearing Notice: January 1, 2004.
Second Hearing: January 14, 2004.

327 IAC 5-4-3 327 IAC 15-15

SECTION 1. 327 IAC 5-4-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-4-3 Concentrated animal feeding operations

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-4

Sec. 3. (a) Concentrated animal feeding operations ~~or CAFOs~~ are point sources ~~subject to the that require NPDES permit program permits for discharges or potential discharges. Once an operation is defined as a CAFO under this section, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal. Except as provided in subsection (d), all CAFO owners or operators must seek coverage under either an individual NPDES permit or a general NPDES permit under 327 IAC 15-15.~~

(b) The following definitions apply throughout this rule:

(1) "Agricultural storm water discharge" means a precipitation related discharge from a land application area where the manure, litter or process wastewater has been applied in accordance with this rule and site-specific nutrient management practices to ensure the agronomic utilization of the nutrients in the manure, litter or process wastewater.

(2) “Animal confinement area” means the areas of the operation where animals are housed. It includes, but is not limited to, the following areas:

- (A) Open lots.**
- (B) Housed lots.**
- (C) Feedlots.**
- (D) Confinement houses.**
- (E) Stall barns.**
- (F) Free stall barns.**
- (G) Milk rooms.**
- (H) Milking center.**
- (I) Cowyards.**
- (J) Barnyards.**
- (K) Medication pens.**
- (L) Walkers.**
- (M) Animal walkways.**
- (N) Stables.**

(3) “Animal feeding operation” or “AFO” means ~~A~~ a lot or facility, other than an aquatic animal production facility, where both the these following conditions are met:

- (A) ~~Animals~~ animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and**
- (B) ~~Crops~~ crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over at least fifty percent (50%) of the lot or facility.**

(4) “Concentrated animal feeding operation” or “CAFO” means an AFO that is one (1) of the following:

- (A) A large CAFO.**
- (B) A medium CAFO.**
- (C) Designated as a CAFO by the commissioner under subsection (c).**

Two (2) or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if the AFOs adjoin each other or if the AFOs use a common area or system for land application of manure, litter or process wastewater.

(5) “CFO approval” means a valid approval issued by the commissioner under 327 IAC 16.

(6) “Land application area” means land under the control of an AFO owner or operator, whether the land is owned, rented, leased, or subject to an access agreement, to which manure, litter, or process wastewater from the production area is or may be applied.

(7) “Large concentrated animal feeding operation” or “large CAFO” means an AFO that stables or confines as many as or more than the number of animals specified in any of the following categories:

- (A) Seven hundred (700) mature dairy cows, whether milked or dry.**
- (B) One thousand (1,000) veal calves.**
- (C) One thousand (1,000) cattle other than mature dairy cows or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs.**
- (D) Two thousand five hundred (2,500) swine each weighing fifty-five (55) pounds or more.**
- (E) Ten thousand (10,000) swine each weighing less than fifty-five (55) pounds.**
- (F) Five hundred (500) horses.**
- (G) Ten thousand (10,000) sheep or lambs.**
- (H) Fifty-five thousand (55,000) turkeys.**
- (I) Thirty thousand (30,000) laying hens or broilers, if the AFO uses a liquid manure handling system.**
- (J) One hundred twenty-five thousand (125,000) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system.**
- (K) Eighty-two thousand (82,000) laying hens, if the AFO uses other than a liquid manure handling system.**

- (L) Thirty thousand (30,000) ducks, if the AFO uses other than a liquid manure handling system.
- (M) Five thousand (5,000) ducks, if the AFO uses a liquid manure handling system.
- (8) "Manure" means animal feces or urine or both and materials such as bedding, compost, raw materials or other materials commingled with animal feces or urine or both feces and urine.
- (9) "Manure storage area" means any area where manure is kept. It includes, but is not limited to, the following areas:
 - (A) Lagoons.
 - (B) Run-off ponds.
 - (C) Storage sheds.
 - (D) Stockpiles.
 - (E) Under house or pit storage.
 - (F) Liquid impoundments.
 - (G) Static piles.
 - (H) Composting piles.
- (10) "Medium concentrated animal feeding operation" or "medium CAFO" means:
 - (A) an AFO, where the type and number of animals that are stabled or confined at the operation falls within the following ranges:
 - (i) Two hundred (200) to six hundred ninety-nine (699) mature dairy cows, whether milked or dry;
 - (ii) Three hundred (300) to nine hundred ninety-nine (999) veal calves;
 - (iii) Three hundred (300) to nine hundred ninety-nine (999) cattle other than mature dairy cows or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs;
 - (iv) Seven hundred fifty (750) to two thousand four hundred ninety-nine (2,499) swine each weighing fifty-five (55) pounds or more;
 - (v) Three thousand (3,000) to nine thousand nine hundred ninety-nine (9,999) swine each weighing less than fifty-five (55) pounds;
 - (vi) One hundred fifty (150) to four hundred ninety-nine (499) horses;
 - (vii) Three thousand (3,000) to nine thousand nine hundred ninety-nine (9,999) sheep or lambs;
 - (viii) Sixteen thousand five hundred (16,500) to fifty-four thousand nine hundred ninety-nine (54,999) turkeys;
 - (ix) Nine thousand (9,000) to twenty-nine thousand nine hundred ninety-nine (29,999) laying hens or broilers, if the AFO uses a liquid manure handling system;
 - (x) Thirty-seven thousand five hundred (37,500) to one hundred twenty-four thousand nine hundred ninety-nine (124,999) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system;
 - (xi) Twenty-five thousand (25,000) to eighty-one thousand nine hundred ninety-nine (81,999) laying hens, if the AFO uses other than a liquid manure handling system;
 - (xii) Ten thousand (10,000) to twenty-nine thousand nine hundred ninety-nine (29,999) ducks, if the AFO uses other than a liquid manure handling system;
 - (xiii) One thousand five hundred (1,500) to four thousand nine hundred ninety-nine (4,999) ducks, if the AFO uses a liquid manure handling system;
 - and
 - (B) one (1) of these conditions are met:
 - (i) pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or
 - (ii) pollutants are discharged directly into waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(11) "No potential to discharge" means, for purposes of section 3.1 of this rule, that there is no potential for any CAFO manure, litter, or process wastewater to be added to waters of the state under any circumstance or climatic condition.

(12) "Process wastewater" means the following:

(A) Water directly or indirectly used in the operation of the AFO for any or all of the following:

- (i) Spillage or overflow from animal or poultry watering systems.
- (ii) Washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities.
- (iii) Direct contact swimming, washing, or spray cooling of animals.
- (iv) Dust control.

(B) Process wastewater includes any water that comes into contact with or is a constituent of any raw materials, products, or byproducts, including manure, litter, feed, milk, eggs, or bedding.

(13) "Production area" means that part of an AFO that includes the following:

- (A) The animal confinement areas.
- (B) The manure storage areas.
- (C) The raw materials storage areas.
- (D) The waste containment areas.
- (E) Egg washing or processing facility.
- (F) Milking parlor.
- (G) Any area used in the storage, handling, treatment, or disposal of mortalities.

(14) "Raw materials storage area" includes, but is not limited to, the following:

- (A) Feed silos.
- (B) Silage bunkers.
- (C) Bedding materials storage sheds.
- (D) Feed bins.
- (E) Feedstuffs storage bunkers and sheds.

(15) "Small concentrated animal feeding operation" or "small CAFO" means an AFO that is designated as a CAFO and is not a medium CAFO or large CAFO.

(16) "Waste containment area" means an area designed to contain manure, litter or process wastewater and includes, but is not limited to, the following:

- (A) Settling basins.
- (B) Areas within berms and diversions that separate uncontaminated storm water.

(c) Case-by-case designation of ~~concentrated animal feeding operations~~ **an AFO as a CAFO** shall occur as follows:

(1) Notwithstanding any other provision of this section, any ~~animal feeding operation~~ **AFO** may be designated as a ~~concentrated animal feeding operation~~ **CAFO** where it is determined to be a significant contributor of **pollutants** to the waters of the state. In making this designation, the commissioner shall consider the following factors:

- (A) The size of the ~~animal feeding operation~~ **AFO** and the amount of wastes reaching waters of the state.
- (B) The location of the ~~animal feeding operation~~ **AFO** relative to waters of the state.
- (C) The means of conveyance of **manure, litter**, and process wastewaters into waters of the state.
- (D) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of ~~animal wastes~~, **manure, litter**, and process ~~wastewaters~~ **wastewater** into waters of the state.
- (E) Other factors relevant to the significance of the pollution problem under consideration.

(2) In no case shall a ~~permit application be required from a animal feeding operation~~ **an AFO be designated as a CAFO** ~~designated~~ under this subsection until there has been an on-site inspection of the operation and a determination that the operation should be regulated under the permit program.

(3) No ~~animal feeding operation~~ **AFO** with less than the numbers of animals set forth in subsection ~~(b)~~ **(10)** shall be designated as a ~~concentrated animal feeding operation~~ **CAFO** unless:

- (A) pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or
- (B) pollutants are discharged directly into waters of the state **that** originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(d) An owner or operator of a large CAFO does not need to seek permit coverage under this rule or 327 IAC 15-15 if the owner or operator has received a notification from the commissioner of a determination that the CAFO has no potential to discharge in accordance with 327 IAC 5-4-3.1.

(e) In addition to the requirements of 327 IAC 5-2-3, the owners or operators of new and existing CAFOs applying for an individual NPDES permit shall provide to the department the following:

- (1) The following information on forms provided by the department:**
 - (A) Name, telephone number, and mailing address of the owner and operator.**
 - (B) Name, location, and address of the operation. Contact person and telephone number.**
 - (C) Type and number of animals at the operation.**
 - (D) Type of containment and storage and total capacity for manure, litter, and process wastewater storage (ton/gallons).**
 - (E) Total number of acres under control of the applicant available for land application.**
 - (F) Estimated amount of manure, litter, and process wastewater generated per year (tons/gallons).**
 - (G) Estimated amount of manure, litter, and process wastewater transferred to other persons per year (tons/gallons).**
 - (H) List of other environmental permits held and permit numbers including, if applicable, the CFO farm ID number provided on state CFO approval under 327 IAC 16.**
 - (I) A soil survey map of the geographic area in which the CAFO is located showing the location of the production area facility and land application areas.**
 - (J) SIC code for the operation.**
 - (K) Name of water body receiving drainage from the production area.**
 - (L) Telephone number and title of person signing the application.**
- (2) Payment of the application fee of fifty dollars (\$50).**

(f) The department shall process the application in accordance with the procedures specified in 327 IAC 5-3. The permit will require the applicant to comply with nutrient management and water quality standards under 327 IAC 15-15 and 327 IAC 16.

(g) The discharge of manure, litter or process wastewater from a CAFO to waters of the state as a result of land application of manure, litter or process wastewater by the CAFO to land application areas under the control of the CAFO owner or operator is a discharge subject to NPDES permit requirements under this rule or 327 IAC 15-15, except where it is an agricultural storm water discharge.

(h) Not later than one hundred eighty (180) days before the expiration of the permit, the permittee shall submit an application to renew the permit on forms provided by the department. The permittee need not reapply for a permit if the facility has:

- (1) ceased operation and has demonstrated to the commissioner that there is no remaining potential to discharge; or**
- (2) reduced the number of animals such that the facility is no longer defined as a CAFO.**

(i) The deadlines to either seek coverage under an individual NPDES permit pursuant to this rule or under a general NPDES permit pursuant to 327 IAC 15-15 are as follows:

(1) Operations defined as CAFOs prior to April 14, 2003, must seek coverage as of April 14, 2003, and comply with all applicable requirements at the time of coverage.
(2) The following operations, which were defined as CAFOs as of April 14, 2003, but were not defined as CAFOs prior to that date, must seek coverage no later than February 13, 2006:

- (A) CAFOs with one thousand (1,000) or more heifers.
 - (B) CAFOs with ten thousand (10,000) or more swine weighing less than fifty five (55) pounds.
 - (C) CAFOs with one hundred twenty-five thousand (125,000) or more chickens, other than laying hens, if the CAFO uses other than a liquid manure handling system.
 - (D) CAFOs with eighty-two thousand (82,000) or more laying hens, if the CAFO uses other than a liquid manure handling system.
- (3) Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to April 14, 2003 because the operation has not discharged except in the event of a twenty-five (25) year, twenty-four (24) hour rainfall event must:
- (A) maintain a CFO approval under 327 IAC 16 until an individual NPDES permit is obtained or the operation receives general permit coverage under 327 IAC 15-15;
 - (B) certify to the commissioner in writing within ninety (90) days of the effective date of this rule that:
 - (i) the AFO was not required to apply for a permit under 327 IAC 5;
 - (ii) a discharge has not occurred from the AFO; and
 - (iii) the operation was constructed and is at all time maintained to prevent a discharge during dry weather and wet weather up to and including a twenty-five (25), twenty-four (24) hour rainfall event;
 - (C) sign the certification in accordance with 327 IAC 15-15-5(c);
 - (D) seek permit coverage under an individual permit pursuant to this rule or under a general NPDES permit pursuant to 327 IAC 15-15 by April 13, 2006; and
 - (E) not discharge manure, litter or process wastewater to the waters of the state. If an AFO has a discharge after submitting a certification to the commissioner, the AFO must:
 - (i) notify the department of the discharge within twenty-four (24) hours of the discharge; and
 - (ii) seek coverage within thirty (30) days of the discharge under:
 - (AA) an individual NPDES permit pursuant to the rule; or
 - (BB) a general NPDES permit pursuant to 327 IAC 15-15.
- (4) Any operation that has a discharge after submitting the certification under this subsection to the commissioner shall:
- (A) Immediately notify the department of the discharge; and
 - (B) Seek coverage within thirty (30) days of the discharge under:
 - (i) An individual NPDES permit under this rule; or
 - (ii) The NPDES general permit rule under 327 IAC 15-15.
- (5) For operations that are newly constructed or that make changes, such that the operation becomes a CAFO as defined under this rule, after April 14, 2003, but are not new sources as defined by 327 IAC 15-15-3(4):
- (A) for newly constructed operations not subject to effluent limitations guidelines in 40 CFR 412, effective April 14, 2003, one hundred eighty (180) days prior to commencement of operations; or
 - (B) for other operations, no later than ninety (90) days after becoming a CAFO as defined under this rule.
- However, if an operational change that makes the operation a CAFO would not have made the operation CAFO prior to April 14, 2003, the operation has until April 13, 2006, or ninety (90) days from becoming defined as a CAFO, whichever is later, to seek coverage.
- (6) New sources, as defined by 327 IAC 15-15-3(4), must seek permit coverage at least one hundred eighty (180) days prior to the time the CAFO is expected to commence operation.

A new CAFO may commence operation at the time that the facility obtains an NPDES permit.

(7) Operations designated as a CAFO must seek permit coverage within ninety (90) days of being designated.

(j) A CAFO that obtains an individual NPDES permit under this section, or obtains a general permit under 327 IAC 15-15, is not required to obtain or renew the CFO approval under 327 IAC 16-7.

(k) Permits for CAFOs shall include conditions based on the requirements in 327 IAC 5-2-8, 5-2-10, and 5-2-12. (*Water Pollution Control Board; 327 IAC 5-4-3; filed Sep 24, 1987, 3:00 p.m.: 11 IR 642*)

SECTION 2. 327 IAC 327 IAC 5-4-3.1 IS ADDED TO READ AS FOLLOWS:

327 IAC 5-4-3.1 No potential to discharge determination

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1
Affected: IC 13-18-10

Sec. 3.1. (a) The commissioner, upon request, may make a case-specific determination that a large CAFO has no potential to discharge pollutants to waters of the state. When making such a determination, the commissioner shall consider the following:

- (1) The potential for discharges from the production area.
- (2) The potential for discharges from any land application area.
- (3) Any record of prior discharges by the CAFO.

(b) The commissioner shall not determine the CAFO to have no potential to discharge pollutants if the CAFO has had a discharge within the five (5) years prior to the date of the request under this section.

(c) To request a determination of no potential to discharge, the owner or operator shall submit any information that would support such a determination, including all information required under section 3 of this rule and 327 IAC 5-2-3. The commissioner may require additional information to supplement the request and may gather information through an on-site inspection of the CAFO. The information is to be submitted to the commissioner by the date required for submission of an NOI or permit application.

(d) Before making a final decision to grant a no potential to discharge determination, the commissioner shall issue a public notice of receipt of the request. The notice must be accompanied by a fact sheet, which shall include the following:

- (1) A brief description of the type of facility or activity requesting the determination.
- (2) A brief summary of the factual basis, upon which the request was based, for granting the determination.
- (3) A description of the procedures for reaching a final decision on the determination.

(e) The commissioner must notify a CAFO of the final determination within ninety (90) days of receiving the request. If the commissioner denies the no potential for discharge determination, the owner or operator of the CAFO must seek coverage under an NPDES permit within thirty (30) days of the denial.

(f) Any unpermitted CAFO that discharges pollutants into waters of the state is in violation of the Clean Water Act and IC 13-30-2-1 even if it has received a no potential to discharge determination from the commissioner.

(g) Any CAFO that has received a no potential to discharge determination under this section but that anticipates changes in circumstances that could create the potential for a discharge shall

contact the commissioner and apply for and obtain coverage under an NPDES permit prior to the change of circumstances.

(h) The commissioner retains the authority to require NPDES permit coverage for a CAFO that has received a no potential to discharge determination under this section if circumstances at the facility change, new information becomes available, or there is reason to believe that the CAFO has a potential to discharge.

(i) A determination of no potential to discharge only relates to discharges of manure, litter and process wastewater covered by this rule.

(j) The commissioner shall base the decision to grant a no potential to discharge determination on the administrative record, which includes all information submitted in support of the determination and any other data gathered by the department. (*Water Pollution Control Board; 327 IAC 5-4-3.1*)

SECTION 3. 327 IAC 15-15 IS ADDED TO READ AS FOLLOWS:

Rule 15. Concentrated Animal Feeding Operations

327 IAC 15-15-1 Purpose and Effect

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 1. (a) The purpose of this rule is to establish an NPDES general permit for CAFOs. In addition to the requirements of this article for all general permits, this rule establishes the requirements for CAFOs in Indiana. The requirements of this article applicable to all general permits, including the standard conditions in 327 IAC 15-4-1, and the requirements of this rule apply to all CAFOs authorized under this general permit rule.

(b) Compliance with all requirements of applicable general permit rules in this article may eliminate the need for an individual NPDES permit issued under 327 IAC 5. A facility can operate under an individual NPDES permit and one (1) or more applicable general permit rules.

(c) For discharges and potential discharges of manure, litter, process wastewater, and storm water associated with regulated activity, compliance with this article and general permit rule constitutes compliance with sections 301, 302, 306, 307, 318, 403 and 405(a) and (b) of the Clean Water Act and state law in reference to discharges and potential discharges of manure, litter, process wastewater and storm water.

(d) Compliance with this rule and all applicable requirements for an NPDES general permit under article 15 shall meet the nondegradation requirements of 327 IAC 2-1. (*Water Pollution Control Board; 327 IAC 15-15-1*)

327 IAC 15-15-2 Applicability and Permit Boundary

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10; IC 13-30-3

Sec. 2. (a) This rule applies to all CAFOs or AFOs designated as CAFOs under 327 IAC 5-4-3(c) or 40 CFR 122.23(c), effective April 14, 2003, or AFOs electing to be subject to this rule, located within the boundaries of the state of Indiana. All CAFO owners or operators must seek permit coverage under this rule or through an individual NPDES permit, except as provided in subsection (f).

(b) Any owner or operator covered by this rule can request to be excluded from coverage under this general permit rule by applying for and obtaining an individual NPDES permit.

(c) An owner or operator excluded from this general permit rule solely because the owner or operator has a valid existing individual NPDES permit may request coverage under this general permit rule and revocation of the existing individual NPDES permit under 327 IAC 15-2-3, unless the owner or operator is required to maintain an individual permit.

(d) A CAFO that has a general permit under this rule is not required to obtain or renew the CFO approval under 327 IAC 16-7.

(e) If the commissioner requires an operation to have an individual NPDES permit under 327 IAC 5-4-3, the commissioner shall notify the owner or operator in writing that an individual NPDES permit application is required. The notice shall include the following:

- (1) A brief statement of the reasons for this decision.
- (2) An application form.
- (3) A statement setting a date by which the person must file the application.
- (4) A statement that on the effective date of the individual NPDES permit, the general permit rule, as it applies to the particular owner or operator, shall no longer apply.

The commissioner may grant additional time upon request of the applicant for completion of the application.

(f) An owner or operator of a large CAFO does not need to seek permit coverage under this rule or 327 IAC 5-4-3 if the owner or operator has received a notification from the commissioner of a determination that the CAFO has no potential to discharge in accordance with 327 IAC 5-4-3.1. *(Water Pollution Control Board; 327 IAC 15-15-2)*

327 IAC 15-15-3 Definitions

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-11-2; IC 13-18-10

Sec. 3. The definitions contained in IC 13-11-2, 327 IAC 5-1.5, and 327 IAC 5-4-3 apply throughout this rule. In addition to those definitions, the following definitions apply throughout this rule:

- (1) "Agricultural storm water discharge" means a precipitation related discharge from a land application area where the manure, litter or process wastewater has been applied in accordance with this rule and site-specific nutrient management practices to ensure the agronomic utilization of the nutrients in the manure, litter or process wastewater.
- (2) "Flood plain" means any area adjoining a river, stream, or lake that has been or may be covered by a one hundred (100) year flood.
- (3) "Individual NPDES permit" means a NPDES permit issued to one (1) facility that contains requirements specific to that facility.
- (4) "New Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after February 13, 2003.
- (5) "Notice of intent letter" or "NOI" means a written notification indicating a person's intention to comply with the terms of this general permit rule in lieu of applying for an individual NPDES permit.
- (6) "NRCS 590 standard" means the Indiana Natural Resources Conservation Service (NRCS) Nutrient Management Conservation Practice Standard, Code 590, July 2001. *
- (7) "One-hundred (100) year, twenty-four hour (24) rainfall event" means a twenty-four (24) hour precipitation event with a probable recurrence interval of once in one hundred (100) years, as defined by the National Weather Service Technical Paper No. 40, "Rainfall Frequency Atlas of the United States, " May, 1961. *
- (8) "Overflow" means the discharge of manure or process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater or storm water can be contained by the structure.
- (9) "Public water supply surface intake structure" means any structure used for the purpose of providing water through a public water supply system.

(10) "Public water supply well" means any well that provides water to the public through a water distribution system that:

(A) serves at least twenty-five (25) persons per day for:

- (i) drinking;**
- (ii) domestic use; or**
- (iii) other purposes; or**

(B) has at least fifteen (15) service connections.

(11) "Setback" means a specified distance from surface waters or potential conduits to surface waters where manure, litter, and process wastewater may not be land applied. Examples of conduits or potential conduits include, but are not limited to the following:

(A) Open tile line intake structures.

(B) Sinkholes.

(C) Agricultural well heads.

(12) "Twenty-five (25) year, twenty-four (24) hour rainfall event" means a twenty-four (24) hour precipitation event with a probable recurrence interval of once in twenty-five (25) years, as defined by the National Weather Service Technical Paper No. 40, "Rainfall Frequency Atlas of the United States, " May, 1961. *

(13) "Vegetated buffer" means a narrow, permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purpose of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

(Water Pollution Control Board; 327 IAC 15-15-3)

***This document is incorporated by reference. Copies are available for review and copying at the Indiana Department of Environmental Management, Office of Land Quality, Indiana Government Center-North, Eleventh Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.**

327 IAC 15-15-4 Performance Standards and Effluent Limitations

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 4. (a) All waste management systems must be designed, constructed, and maintained to minimize leaks and seepage and prevent spills. Unless otherwise specified, all requirements under this section must be met by the date of permit coverage.

(b) Manure, litter, or process wastewater to be staged or applied to land in Indiana must be staged or applied in such a manner as:

(1) not to enter or threaten to enter waters of the state;

(2) to prevent:

(A) run-off;

(B) application on saturated ground; and

(C) spills; and

(3) to minimize nutrient leaching beyond the root zone.

(c) Animals in any confinement area must not have direct access to waters of the state.

(d) There shall be no discharge of process wastewater pollutants to waters of the state, except as described in subsection (e). Pumping, dumping, or allowing the leakage or drainage of manure, litter or process wastewater from a manure transfer vehicle onto unauthorized premises, public thoroughfares, or into waters of the state is also prohibited.

(e) Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated and maintained to contain all process wastewater generated in addition to the runoff from a twenty-five (25) year, twenty-four (24) hour rainfall event for the location of the point source, process wastewater pollutants in the overflow may be discharged into waters, provided that the production area is operated in accordance with the additional requirements of 40 CFR 412.37(a) and (b), effective April 14, 2003.

(f) Any discharges by operations permitted under this rule are required to meet water quality standards under 327 IAC 5.

(g) New source and existing dairy, heifer, horse, duck, veal, swine, poultry, cattle other than mature dairy cows, and sheep CAFOs must meet the following requirements and effluent limitations for the CAFO production areas as of the date of permit coverage:

- (1) There must be no discharge of manure, litter or process wastewater pollutants to waters of the state.
- (2) Install a depth marker in all open surface liquid impoundments that indicates the minimum capacity necessary to contain the runoff and direct precipitation of the twenty-five (25) year, twenty-four (24) hour rainfall event, or two (2) feet of freeboard, whichever is greater.
- (3) Whenever rainfall events cause an overflow of process wastewater from a structure designed, constructed, operated and maintained to contain all process wastewater including the direct precipitation and runoff from a twenty-five (25) year, twenty-four (24) hour rainfall event for the location of the point source, process wastewater pollutants in the overflow may be discharged into waters, provided that the production area is operated in accordance with the requirements of subdivisions (2) and (4) through (8) of this subsection.
- (4) Conduct weekly visual inspections of all of the following:
 - (A) Storm water diversion devices.
 - (B) Runoff diversion devices.
 - (C) Devices channeling contaminated storm water to the process wastewater and manure storage structure.
 - (D) Manure, litter, and process wastewater impoundments, noting the level in open surface liquid impoundments as indicated by the depth marker.
- (5) Conduct daily inspection of all water lines that may come in contact with or impact manure, litter, or process wastewater in and around the production area. Such lines include drinking water lines for livestock.
- (6) Correct any deficiencies found in inspections as soon as possible.
- (7) Do not dispose of mortalities in a liquid manure or process wastewater system. Mortalities must be handled in such a way as to prevent the discharge of pollutants to surface water.
- (8) Maintain, within the operating record required under section 17 of this rule, for a period of five (5) years from the date of creation, a complete copy of the following records:
 - (A) Records documenting self-inspections.
 - (B) Weekly records of the depth of manure and process wastewater in the open surface liquid impoundment, as indicated by the depth marker.
 - (C) Records of actions taken to correct deficiencies. Deficiencies not corrected within thirty (30) days of discovery must be accompanied by an explanation of the factors preventing immediate correction.
 - (D) Records of mortality management and practices.
 - (E) Records documenting the current design of any manure, litter or process wastewater storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity.
 - (F) Records of the date, time and estimated amount of any overflow.

(h) For the land application areas of new source and existing dairy, veal, swine, poultry, cattle other than mature dairy cows, horse, sheep, duck and heifer CAFOs, the following records must be maintained in the operating record for a period of five (5) years from the date of permit coverage:

- (1) Expected crop yields.
- (2) The date or dates manure, litter, or process wastewater is applied to each field.
- (3) Precipitation events at the time of application and for twenty-four (24) hours prior to and following application.
- (4) Test methods used to sample and analyze manure, litter, process wastewater and soil.

- (5) Results from manure, litter, process wastewater, and soil sampling.
- (6) Explanation of the basis for determining manure, litter and process wastewater application rates.
- (7) Calculations showing the total nitrogen and phosphorus to be applied to each field, including sources other than manure, litter, or process wastewater.
- (8) Total amount of nitrogen and phosphorus actually applied to each field, including documentation of calculations for the total amount applied.
- (9) The method used to apply the manure, litter, or process wastewater.
- (10) Date(s) of manure, litter and process wastewater application equipment inspection.
- (11) USDA soil survey maps of currently available land application sites.

(i) For new source veal, swine, and poultry CAFOs, the following requirements apply to the production areas of the CAFO as of the date of permit coverage:

- (1) There must be no discharge of manure, litter or process wastewater pollutants into waters of the state, subject to the requirements of this subsection.
- (2) Waste management and storage facilities must be designed, constructed, operated and maintained to contain all manure, litter, and process wastewater and, if applicable, runoff and the direct precipitation from a one hundred (100) year, twenty-four (24) hour rainfall event.
- (3) Production areas must be operated in accordance with the requirements of subsections (g)(4) through (g)(8) of this section. Additionally, sources must install a depth marker in all open surface liquid impoundments that indicates the minimum capacity necessary to contain the runoff and direct precipitation of a one hundred (100) year, twenty-four (24) hour rainfall event, or two (2) feet of freeboard, whichever is greater.

(Water Pollution Control Board; 327 IAC 15-15-4)

327 IAC 15-15-5 Notice of intent requirements

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1
Affected: IC 13-18-10

Sec. 5. (a) The owner or operator of a CAFO seeking permit coverage under this rule shall submit a notice of intent (NOI), on a form provided by the commissioner, to the Indiana Department of Environmental Management, Office of Land Quality, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, IN 46206-6015, Attention: Permits Section. NOIs must be submitted within the deadlines found at 327 IAC 5-4-3(i).

(b) The owner or operator must:

(1) include the following information in the NOI:

- (A) Name, telephone number, and mailing address of the owner and operator.
- (B) Name, location, and address of the operation. Contact person and telephone number.
- (C) Type and number of animals at the operation.
- (D) Type of containment and storage and total capacity for manure, litter, and process wastewater storage (tons/gallons).
- (E) Total number of acres under control of the applicant available for land application.
- (F) Estimated amount of manure, litter, and process wastewater generated per year (tons/gallons).
- (G) Estimated amount of manure, litter, and process wastewater transferred to other persons per year (tons/gallons).
- (H) List of other environmental permits held and permit numbers, including the CFO farm ID number provided on state CFO approval under 327 IAC 16.
- (I) A soil survey map of the operation, as required under section 17(c) of this rule, and land application areas, as required under section 4 of this rule.
- (J) SIC code for the operation.
- (K) Name of water body receiving drainage from the production area

(L) Telephone number and title of person signing the NOI.

(M) List all discharges to waters of the state during the five (5) years preceding the submittal of the NOI.

(N) For newly constructing CAFOs, a list of names and addresses of all property owners adjacent to the production area property.

(O) For CAFOs applying to use the land application setbacks for injection or single pass incorporation under section 12 of this rule, a demonstration, on forms provided by the department, that the method of application will provide equivalent environmental protection as provided by the setbacks listed in Table 1 of section 12 of this rule.

(P) For CAFOs applying to use the land application setbacks for solid manure or litter surface applied and incorporated within twelve (12) hours under section 12 of this rule, a demonstration, on forms provided by the department, that the method of application will provide equivalent environmental protection as provided by the setbacks listed in Table 1 of section 12;

(Q) Other than Indiana, list all states wherein the owner or operator owns or operates a CAFO; and

(2) submit the application fee of fifty dollars (\$50).

(c) The NOI must be certified and be signed in accordance with 327 IAC 15-4-3(g).

(d) Following submittal of the NOI to the department, the department shall do the following:

(1) Review the NOI for completeness and applicability under this rule.

(2) Consider any public comments on whether the operation should be required to obtain an individual permit.

(3) Review past compliance and the enforcement history for the site.

(4) Review the NOI and the information provided under this section relative to section 9(a) of this rule.

(5) If the department determines under section 9 of this rule that the facility should obtain an individual NPDES permit, the department shall provide notice to the operation that an individual permit is required.

(e) Compliance with the NOI submission requirements under this rule satisfies the requirements to submit a manure management plan under IC 13-18-10-2.3. The NOI must be complete and on forms provided by the commissioner.

(f) An NPDES general permit under this rule may not be transferred. If ownership of a facility is transferred to a new owner, the new owner must submit an NOI under this section or apply for an individual NPDES permit under 327 IAC 5-4-3. The new owner must submit the NOI at least thirty (30) days prior to beginning operations at the facility.

(g) Any change in the information submitted in the NOI should be reported as soon as practicable to the commissioner. Changes that are reasonably expected to alter the characteristics of the discharge from the operation regulated under a general permit rule must be reported prior to the change. Following such notice, the commissioner may request the person to submit an application for an individual NPDES permit.

(h) When a permittee becomes aware that incomplete or incorrect information was submitted with the NOI or in any report to the commissioner, the permittee must submit the complete or correct information to the commissioner upon discovery of the omission or error. (*Water Pollution Control Board; 327 IAC 15-15-5*)

327 IAC 15-15-6 Duration and renewal of coverage

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 6. (a) Coverage under this rule is granted by the commissioner for a period of five (5) years from the date coverage commences.

(b) For a CAFO with a valid CFO approval under 327 IAC 16 on the date of submittal of an NOI, coverage under this rule commences on the date that the department receives a complete and timely NOI from the applicant. The commissioner may deny coverage under this rule and require submittal of an application for an individual NPDES permit based on a review of the NOI information submitted under sections 5 and 9 of this rule.

(c) In accordance with 327 IAC 15-2-9(b), section 9(a) of this rule, and 40 CFR 122.28(b), effective April 14, 2003, any interested person may petition the commissioner to require an owner or operator of an operation subject to this rule to apply for and obtain an individual NPDES permit. If the commissioner does not respond to the petition in writing within ninety (90) days of receipt, the petition is deemed denied.

(d) For a CAFO seeking coverage under this rule prior to construction of the facility or modification of a CFO such that it becomes a CAFO, coverage commences on the date the department receives the construction NOI required under section 7.

(e) To obtain renewal of coverage under this general permit rule, the information required under section 5 of this rule shall be submitted to the department no later than one hundred eighty (180) days before the expiration of coverage under the permit. The permittee must submit an NOI to renew a general permit on forms provided by the department. The permittee need not submit an NOI to remain covered under this rule if:

- (1) the facility has ceased operation or is no longer a CAFO; and**
- (2) the permittee has demonstrated to the commissioner that there is no remaining potential to discharge. A CAFO is required to maintain permit coverage until these provisions are met.**

(f) If a CAFO is required to submit an application for an individual NPDES permit, the general permit terminates when:

- (1) the owner or operator fails to timely submit the permit application required under 327 IAC 5-4-3; or**
- (2) the individual permit is issued or denied by the commissioner.**

(g) A construction NOI under section 7 of this rule meets the requirements for an NOI under section 5 of this rule and is in effect for five (5) years, provided the owner or operator meets the construction requirements of section 7. The owner or operator is required to meet all requirements of this rule during the five (5) year term of the construction NOI.

(h) A CAFO that has obtained coverage under this rule or obtained an individual NPDES permit under 327 IAC 5-4-3, satisfies the requirement to obtain an approval from the department under IC 13-18-10. (*Water Pollution Control Board; 327 IAC 15-15-6*)

327 IAC 15-15-7 Construction notice of intent and requirements

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 7. (a) An owner or operator of:

- (1) a proposed CAFO;**
- (2) an AFO or CFO that has an increase in the number of animals as a result of construction such that it becomes a CAFO; or**
- (3) an existing CAFO modifies the operation to:**
 - (A) reduce manure storage capacity to less than the reported capacity in the most recent NOI submission; or**
 - (B) increase animal capacity greater than ten percent (10%) of the reported capacity in the most recent NOI submission,**

that seeks coverage under this rule, must submit an NOI that meets the requirements of section 5 of this rule.

(b) The NOI must also contain all the information required under 327 IAC 16-7-2 and the operation must comply with the design and construction requirements of 327 IAC 16-5 and 16-8.

(c) A CAFO subject to this section may not begin construction until the department provides written notification that the NOI contains all required information and is complete. An owner or operator must begin construction within two (2) years and complete construction within four (4) years of the written notification from the department that the NOI contains all required information and is complete, or the date any appeals related to construction of the operation brought under IC 4-21.5 have been completed, whichever is later.

(d) To provide the department with the opportunity to inspect the system or structure, the owner or operator shall notify the department prior to commencement of construction on a new waste management system or structure.

(e) After completion of construction of a waste management system or structure, the owner or operator shall submit an affidavit to the commissioner certifying that the system or structure was constructed and will be operated in accordance with this rule.

(f) An owner or operator that meets the requirements of this section satisfies the requirement to obtain a construction approval under 327 IAC 16. (*Water Pollution Control Board; 327 IAC 15-15-7*)

327 IAC 15-15-8 Public Notice

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 8. (a) An owner or operator that submits a NOI to construct on land that is undeveloped or for which a valid existing CFO approval or NPDES permit has not been issued shall make a reasonable effort to provide notice to:

- (1) each person who owns land that adjoins the land on which the confined feeding operation is to be located; or**
- (2) all occupants of the land, if a person who owns land that adjoins the land on which the confined feeding operation is to be located does not occupy the land; and**
- (3) the county commissioners of the county in which the confined feeding operation is to be located;**

not more than ten (10) working days after submitting the NOI. The notice must be sent by mail, be in writing, include the date on which the NOI was submitted to the department, and include a brief description of the subject of the NOI. The applicant shall pay the cost of complying with this section. The applicant shall submit an affidavit to the department that certifies that the applicant has complied with this section.

(b) Upon notification by the department that an individual permit is required, the owner or operator shall comply with subsection (a) in regards to notice of the individual NPDES permit application.

(c) Except as provided in subsection (e), for all:

- (1) first time submissions of NOIs; and**
- (2) CAFOs that are modified to increase manure storage capacity by twenty-five percent (25%) or more above the reported manure storage capacity in the most recent NOI submission, including operations subject to subsection (a),**

the department shall publish a notice in the newspaper with the largest circulation in the county after receiving an initial NOI. The notice will request comments be submitted to the department on the eligibility of the owner or operator submitting the NOI for a general permit.

(d) The department shall publish, once annually, a notice in the newspaper with the largest circulation in each county that contains CAFOs that have submitted NOIs to renew coverage under section 6 of this rule. The newspaper notice shall state the following: "The following facilities have been operating a Concentrated Animal Feeding Operation (CAFO) under coverage of a water quality National Permit Discharge Elimination System (NPDES) general permit for the preceding five years. The owners or operators have provided notice to the Indiana Department of Environmental Management (IDEM) of their intention to continue to operate under the NPDES general permit for the next five years.

IDEM considers the owners or operators operating under the NPDES CAFO general permit rule to be eligible to continue to operate under the general permit rule.

Please contact IDEM for information on the water quality permit requirements for a listed owner or operator or if you would like to provide information to IDEM relative to the eligibility of an owner or operator under the CAFO NPDES general permit rule. Under 327 IAC 15-15-6, a person may petition IDEM to require an owner or operator to apply for an individual NPDES permit, in accordance with the applicable rule. "

(e) A newspaper notice under subsection (d) shall not be provided for a CAFO that provides certification to the department, on forms provided by the department, that persons listed under subsection (a)(1) and (2) have been notified of the submission of the NOI and the provisions of the section 6(c) of this rule. The certification to the department must contain the list of persons notified and the means of notification. (*Water Pollution Control Board; 327 IAC 15-15-8*)

327 IAC 15-15-9 General conditions

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 9. (a) The commissioner may require any person, with a facility that has an existing discharge or the potential for a discharge, and is subject to the requirements of this article, to apply for and obtain an individual NPDES permit if one (1) of the following occurs:

(1) The applicable requirements contained in this article are not adequate to ensure compliance with:

(A) water quality standards under 327 IAC 2-1 or 327 IAC 2-1.5; or

(B) the provisions that implement water quality standards contained in 327 IAC 5.

(2) The owner, operator, or facility is not in compliance with the terms and conditions of the general permit rule.

(3) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants from the point source.

(4) Effluent limitations guidelines that are more stringent than the requirements in the general permit rule are subsequently promulgated for point sources regulated by the general permit rule.

(5) A water quality management plan containing more stringent requirements applicable to such point source is approved.

(6) Circumstances have changed since the activity regulated under this article began so that the discharge is no longer appropriately controlled under the general permit rule, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.

(7) The owner or operator has commenced construction, as defined at IC 13-11-2-40.8, before receiving written confirmation from the department that the construction plan is consistent with the general permit.

(8) The facility has an increased potential to discharge because of the proximity to waters of the state and conditions exist at the site that may not prevent discharges to waters of the state without the imposition of additional requirements not contained in this rule.

(9) The owner or operator has knowingly or intentionally submitted false information to the department as part of the NOI or the false information is in the required operating records under this rule.

(10) The owner or operator has failed to comply with a specific general permit requirement relating to protection of water quality on at least three (3) separate occasions within the preceding five (5) years and has been notified of the violations at least twice by the department.

(11) The facility has had a reportable spill pursuant to 327 IAC 2-6.1 to the waters of the state within the five (5) years prior to the NOI submittal.

(12) The land application areas of the operation are closer than the setback distances allowed under section 12 of this rule.

(b) Any person with a facility subject to this rule shall submit an annual report to the commissioner by February fifteenth (15th) of each year for the previous calendar year with the following information:

(1) Number and type of animals, whether in open confinement or housed under roof.

(2) Estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous twelve (12) months.

(3) Estimated amount of total manure, litter and process wastewater transferred to other persons by the CAFO in the previous twelve (12) months.

(4) Total number of acres available for land application.

(5) Total number of acres used for land application of manure, litter and process wastewater in the previous twelve (12) months.

(6) Summary of all manure, litter, and process wastewater discharges from the production area that have occurred in the previous twelve (12) months, including the date, time, and approximate volume for each discharge.

(7) A report on the development and implementation of the soil conservation practice plan required under section 11 of this rule.

(8) Information specified under 327 IAC 15-4-2 and 15-4-3 for any instance of noncompliance. If a spill occurs, the spill must be reported to the department within two (2) hours of discovery, in accordance with 327 IAC 2-6.1-7.

(c) All reports and information required to be submitted under this rule shall be signed and certified in accordance with 327 IAC 15-4-3(g).

(d) It shall not be a defense in an enforcement action that an owner or operator would have had to halt or reduce the permitted activity in order to maintain compliance with the requirements of this rule.

(e) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(f) The owner or operator shall comply with the requirements of 327 IAC 5-2-14.

(g) The owner or operator shall give notice to the commissioner as soon as possible of any planned physical alterations or additions to the permitted facility when the alterations or additions would cause the facility to become a new source under 40 CFR 122.29(b), effective April 14, 2003.

(h) The owner or operator shall give notice to the commissioner of any planned change in the permitted facility or activity that may result in noncompliance with the requirements of this rule.
(*Water Pollution Control Board; 327 IAC 15-15-9*)

327 IAC 15-15-10 Manure, Litter and Process Wastewater Storage and Staging Requirements

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 10. (a) All manure, litter, and process wastewater management systems must be properly maintained and operated to meet the conditions set forth under this general permit rule.

(b) Management of manure, litter, and process wastewater must be in compliance with the following:

- (1) This rule.**
- (2) All applicable state and federal laws.**

(c) Manure, litter, and process wastewater must be in an approved storage structure until removed for land application.

(d) Adequate storage shall be maintained to avoid land application when soil or weather conditions are unsuitable for land application or when land is occupied with crops and unavailable for land application. Land application when soil or weather conditions are unsuitable for land application is prohibited under this rule.

(e) Liquid manure storage structures that are open and process wastewater storage structures that are open must be maintained with a minimum freeboard of two (2) feet and must have clearly identified markers to indicate the following:

- (1) Manure and process wastewater levels relative to the approved freeboard elevation.**
- (2) Except as provided in (3), the minimum capacity necessary to contain the runoff and direct precipitation of the twenty-five (25)-year, twenty-four (24)-hour rainfall event.**
- (3) For new source swine, poultry and veal operations, the minimum capacity necessary to contain the direct precipitation and runoff from a one hundred (100) year, twenty-four (24) hour rainfall event.**

(f) The owner or operator shall inspect all manure, litter and process wastewater management systems for compliance with this rule at least one (1) time each week. Completed self-monitoring records must be kept in the operating record described in section 17 of this rule.

- (g) All earthen berms for manure, litter and process wastewater storage structures must:**
- (1) be stabilized with vegetation or alternative erosion control measures; and**
 - (2) be maintained to allow for visual inspection.**

(h) Dead animal compost operations must have run-on and run-off control. Dead animal compost may be applied to the land if applied in accordance with the land application requirements in this rule. Disposal of dead animals must be handled in accordance with the rules of the board of animal health at 345 IAC 7-7-3.

(i) Manure, litter, and process wastewater staging and land application activities shall be conducted in compliance with sections 4 and 11 through 14 of this rule and as follows:

- (1) Manure and litter that are staged at the application site for more than seventy-two (72) hours must be covered or otherwise protected and applied to the site within ninety (90) days.**
- (2) Staging of solid manure or litter at the application site is prohibited:**
 - (A) within three hundred (300) feet of surface waters of the state, drainage inlets, including water and sediment control basins, or water wells unless there is:**
 - (i) a barrier; or**
 - (ii) a surface gradient that contains or directs any contaminated run-off away from the waters of the state, drainage inlets, including water and sediment control basins, or water wells;**
 - (B) on any area with a slope greater than six percent (6%), unless run-on and run-off is controlled; or**
 - (C) on any standing water or waterway. (*Water Pollution Control Board; 327 IAC 15-15-10*)**

327 IAC 15-15-11 Soil Conservation Practice Plan

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1
Affected: IC 13-18-10

Sec. 11. (a) Except as provided in subsection (b), any person with a facility subject to this rule must develop and implement a soil conservation practice plan for land application areas by December 31, 2006. The following milestones shall be met for the development and implementation of the plan:

- (1) The owner or operator of the CAFO must identify the person who will develop the soil conservation practice plan by December 31, 2004.**
- (2) The owner or operator of the CAFO must have completed the soil conservation practice plan by December 31, 2005.**
- (3) The owner or operator of the CAFO must have implemented the soil conservation practice plan by December 31, 2006.**
- (4) The owner or operator of the CAFO shall report progress toward meeting each milestone in this section in the annual report required under section 9(b) of this rule.**

(b) For CAFOs that become subject to this rule after December 31, 2006, the requirement to develop and implement a soil conservation practice plan shall apply as of the date permit coverage commences. If a person is proposing to apply manure, litter or process wastewater to snow covered or frozen ground, or to highly erodible land, a soil conservation practice plan must be developed and implemented in accordance with section 14 of this rule, before such application. Any land subject to a land use agreement:

- (1) not owned or controlled by the CAFO owner or operator to which manure, litter or process wastewater is applied; and**
- (2) where the land owner does not implement NRCS 590 standards, as applicable under this rule,**

must be used in accordance with sections 10, 12, 13 and 14 of this rule.

(c) All new sources, as defined in section 3 of this rule, must comply with this section upon the date of permit coverage under this rule.

(d) The soil conservation practice plan must be developed in accordance with NRCS 590 standards and must specify, for each field receiving manure, litter or process wastewater for land application how to:

- (1) reduce soil erosion to a tolerable loss (T); and**
- (2) minimize nutrient loss through leaching and runoff.**

(e) The soil conservation practice plan must contain the following:

- (1) A soil map clearly showing the specific fields subject to the conservation practices.**
- (2) A description of the soil types present.**
- (3) Slope of land application sites.**
- (4) Identification of appropriate site-specific conservation practices to reduce soil erosion and control runoff of pollutants.**
- (5) Identification of appropriate methods to minimize nutrient leaching.**
- (6) If applicable, plan for application of manure, litter or process wastewater to frozen or snow covered ground, as required under section 14 of this rule.**
- (7) If applicable, identification of land application sites for frozen or snow covered ground application.**
- (8) If applicable, identification of highly erodible land, as required under 12(i) of this rule.**

(f) The soil conservation practice plan shall be kept with the operating record required under section 17 of this rule. (*Water Pollution Control Board; 327 IAC 15-15-11*)

327 IAC 15-15-12 Nutrient Management Requirements

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 12. (a) CAFOs that are not new sources must conduct manure, litter, and process wastewater testing for nitrogen and phosphorus annually. Soil sampling and testing must be conducted at a minimum once every three (3) years. Owners or operators may use the most recent data required under 327 IAC 16-7-11 to meet this requirement after the effective date of this rule.

(b) CAFOs that are new sources must, as of the date of permit coverage, conduct manure, litter, and process wastewater testing for nitrogen and phosphorus prior to the first land application and annually thereafter. All CAFOs, except for new sources, shall conduct soil testing for phosphorus as of the date of permit coverage and once every three (3) years thereafter.

(c) Owners or operators shall use the protocols listed in the NRCS 590 standard for sampling and testing of soil, manure, litter and process wastewater.

(d) CAFOs that are not new sources must adjust land application rates to conform with the NRCS 590 standard by December 31, 2006.

(e) CAFOs that are new sources must, as of the date of permit coverage, be prepared to conform with land application rates based on the NRCS 590 standard for the first and all subsequent land application activities.

(f) Except as otherwise provided under this section, application of manure, litter, and process wastewater, must be in accordance with the setbacks in Table 1:

Table 1.

SETBACK DISTANCES FROM DOWNGRAIDENT SURFACE FEATURES (in feet)

Known Feature

	Less than or Equal to 6% Slope; or Residue Cover	Greater than 6% Slope
Public water supply wells and public water supply surface intake structures	500	500
Surface waters of the state	100	200
Sinkholes (measured from the surface opening or the lowest point)	100	200
Wells	100	200
Drainage inlets	100	200
Property lines and public roads	50	50

(1) All setback distances must be measured from the edge of the area of actual placement of manure, litter or process wastewater on the land.

(2) The property line setback distances specified in Table 1, may be waived in writing by the owner of the adjoining property.

(3) If a properly designed and maintained filter strip of at least thirty-five (35) feet in width is located between the application site and:

(A) surface waters of the state;

(B) any known private well;

(C) the surface opening or lowest point of any sinkhole; or

(D) any drainage inlet, including water and sediment control basins;

then the setback is the width of the filter strip.

(4) The setback is ten (10) feet if a gradient barrier is located between the application site and:

(A) surface waters of the state;

(B) any known well;

- (C) the surface opening or lowest point of any sinkhole; or
- (D) any drainage inlet, including water and sediment control basins.

(g) Manure, litter, or process wastewater must not be applied to the land from manure application equipment operating on a public road.

(h) Manure, litter, and process wastewater shall not be applied to saturated ground.

(i) When planning land application, the owner or operator must take into account the weather forecast and the likelihood of precipitation events for the twenty-four (24) hour period prior to and after the application and site soil conditions to assure that manure, litter and process wastewater are not applied prior to a rain event that, when combined with soil conditions, would likely result in runoff.

(j) Manure, litter, and process wastewater must not be applied to highly erodible land unless:

- (1) the land is pastureland;
- (2) the land is planted in a cover crop that reduces or controls erosion; or
- (3) the manure, litter or process wastewater is applied in accordance with the soil conservation practice plan required under section 11 of this rule.

(k) Land application sites must be inspected to identify any field tile outlets under or immediately bordering the land application site. Visual monitoring of identified field tile outlets must occur during and immediately following land application of the manure, litter, or process wastewater. If there is evidence of manure or process wastewater discharging from the field tile outlet, the land application must cease immediately and the flow stopped or captured. Any flow that is captured shall be either land applied or returned to storage.

(l) If a CAFO is land applying manure, litter, or process wastewater by injection or single pass incorporation, the CAFO must comply with the following setbacks:

- (1) Public water supply wells and public water supply surface intake structures- 500 feet;
- (2) Surface waters- 25 feet;
- (3) Sinkholes- 25 feet;
- (4) Wells 50- feet;
- (5) Drainage inlets- 5 feet; and
- (6) Property lines and public roads- 0 feet.

(m) If a CAFO is land applying solid manure or litter by surface application followed by incorporation within twelve (12) hours, the CAFO must comply with the following setbacks:

- (1) Public water supply wells and public water supply surface intake structures- 500 feet;
- (2) Surface waters- 50 feet;
- (3) Sinkholes- 50 feet;
- (4) Wells- 50 feet;
- (5) Drainage inlets- 50 feet; and
- (6) Property lines and public roads- 10 feet.

(Water Pollution Control Board; 327 IAC 15-15-12)

327 IAC 15-15-13 Spray Irrigation

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 13. (a) Spray irrigation of liquid manure and process wastewater must be conducted to prevent equipment leaks and excessive application. Application is deemed excessive when the application rate exceeds the infiltration rate of the soil where the application is occurring, expressed in inches per hour.

(b) Application must be conducted:

- (1) under the constant supervision of a person; or**
- (2) with devices to detect pressure loss due to leaks and devices to shut down the system if leaks are detected.**

(c) Manure and process wastewater must not be applied by spray irrigation to any land that has less than twenty (20) inches of soil above the bedrock.

(d) Spray irrigation in a flood plain is prohibited unless the following conditions are met:

- (1) The setback from surface water is increased to 200 feet.**
- (2) Spraying is only done during months that the current county soil survey book indicates have a low potential for flooding.**
- (3) There is no expectation of flooding, based on:**
 - (A) available weather forecast information; and**
 - (B) rainfall or flood conditions upstream within the drainage basin.**

(Water Pollution Control Board; 327 IAC 15-15-13)

327 IAC 15-15-14 Land Application on Snow Covered or Frozen Ground

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 14. Surface application of manure, litter or process wastewater to snow covered or frozen ground is prohibited unless the following conditions are met:

(1) A soil conservation practice plan that includes land application to snow covered or frozen ground has been developed and implemented for the land application area. The plan must meet the following criteria:

- (A) No application to land with a slope greater than two percent (2%), unless there is forty percent (40%) crop residue or vegetated crop cover on the land application site.**
- (B) No application in a flood plain.**
- (C) Application cannot be closer than two hundred (200) feet from any surface water body.**
- (D) The application rate can be no more than a total of fifty percent (50%) of the agronomic rate, based on nitrogen, for each time period that the ground is frozen or snow covered.**

(2) The plan must identify the land application sites to be used during snow covered or frozen ground application.

(Water Pollution Control Board; 327 IAC 15-15-14)

327 IAC 15-15-15 Marketing Requirements

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 15. (a) The owner or operator shall provide an information sheet to any person that receives or purchases more than ten (10) cubic yards or two thousand (2,000) gallons of manure, litter, or process wastewater in a year from the CAFO unless the CAFO owner or operator takes responsibility for applying the manure, litter, and process wastewater. The owner or operator shall record all information required under section 17(a)(4) for each person who receives or purchases manure, litter or process wastewater under this section and maintain the information in the operating record.

(b) The information sheet must contain, at a minimum, the following information:

- (1) The name and address of the CAFO providing the manure.**
- (2) A statement indicating that it is unlawful to allow the manure, litter, and process wastewater to enter any waters of the state.**
- (3) Information on the nutrient content of the manure, litter, and process wastewater, based on the most current analysis.**

- (4) The manure, litter, and process wastewater application requirements of this rule.
- (Water Pollution Control Board; 327 IAC 15-15-15)

327 IAC 15-15-16 Emergency Spill Response Plan

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 16. (a) The permittee shall comply with the following:

- (1) Develop an emergency spill response plan.**
- (2) Maintain the emergency spill response plan in the operating record, required under section 17 of this rule.**
- (3) Implement the emergency spill response plan at any time a spill occurs.**
- (4) Familiarize all employees involved with manure, litter, or process wastewater handling with the emergency spill response plan.**
- (5) Maintain the emergency spill response plan at the permitted facility in a place accessible to all employees.**

(b) The emergency spill response plan must include the following:

- (1) The names and telephone numbers of persons who are identified by the owner or operator as responsible for implementing the emergency spill response plan.**
- (2) Areas where potential spills can occur and the drainage points associated with the potential spills.**
- (3) Procedures to be followed in the event of a spill, including the following:**
 - (A) Actions to contain or manage any spill of manure, litter, and process wastewater.**
 - (B) Mitigation of any adverse effects of the spill.**
- (4) Identification of equipment and clean-up materials to be used in the event of a spill.**
- (5) Procedures for reporting the spill to:**
 - (A) the facility owner and operator;**
 - (B) any applicable local emergency or health authorities; and**
 - (C) the department in accordance with 327 IAC 2-6.1.**

(Water Pollution Control Board; 327 IAC 15-15-16)

327 IAC 15-15-17 Operating Record

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 17. (a) The following information must be included and maintained in the operating record and updated:

- (1) All valid, permits, modifications, and notifications.**
- (2) The current annual report information, required under section 9 of this rule.**
- (3) The current emergency spill response plan, required under section 16 of this rule.**
- (4) The operating record must also contain, for five (5) years, all applicable records of any person who receives or purchases more than ten (10) cubic yards or two thousand (2,000) gallons of manure, litter, or process wastewater in a year to include:**
 - (A) the name and address of the person receiving or purchasing the manure, litter, or process wastewater;**
 - (B) the amount of manure, litter, or process wastewater received or purchased by the person;**
 - (C) a copy of the information sheet required under section 15 of this rule; and**
 - (D) the date or dates of the transfer.**
- (5) Updated calculation of minimum acreage required to meet land application requirements under this rule.**
- (6) Maps required under subsection (c).**
- (7) Farmstead plan required under subsection (e).**
- (8) The soil conservation practice plan required under section 11 of this rule.**
- (9) Records required under sections 4 and 10 of this rule.**
- (10) The storm water pollution prevention plan required under section 18 of this rule.**

(b) Access to a minimum number of acres for land application of manure, litter, or process wastewater must be maintained and documented in the operating record at all times based on the requirements in this rule.

(1) Any acreage identified as part of the minimum required acreage for the application of manure, litter, or process wastewater that is not owned by the owner or operator of the CAFO must be documented in the operating record by land use agreements signed by the property owners on whose property the manure, litter, or process wastewater will be applied.

(2) Copies of any written waivers related to reduction of the property line setback distances by adjoining property owners must be kept in the operating record.

(3) The amount of minimum acreage required to be accessible for land application may be reduced based on the amount of manure marketed but may not be reduced to less than twenty-five percent (25%) of the minimum required amount based on the amount of manure generated annually.

(c) A United States Department of Agriculture Natural Resources Conservation Service soil survey map of the facility and land application areas that clearly shows the following:

(1) The location of the waste management systems.

(2) The boundaries of the property of the facility.

(3) The boundaries of all land application areas.

(d) A copy of the final design drawings or the as-built plans of the waste management system.

(e) A farmstead plan must show all existing waste management systems and the following known features:

(1) Residences.

(2) Surface waters of the state.

(3) Public and private roads.

(4) Water well locations.

(5) Land with the characteristics of karst terrain as identified in 327 IAC 16-2-21.

(6) Drainage patterns.

(7) Property boundary line.

(8) All outfalls of known subsurface drainage structures.

(9) Drainage inlets, including water and sediment control basins.

(10) Diversion of uncontaminated surface water.

(f) The farmstead plan must be legible and either:

(1) drawn to approximate scale; or

(2) show specific distances between:

(A) the waste management systems; and

(B) the features in subsection (e) that are within five hundred (500) feet of the existing or proposed waste management system.

(g) The waste management system drawing or plans must show detailed views and necessary cross sections to define all dimensions and construction materials. Complete and entire elevations must be provided for waste management systems relying on gravity flow. (*Water Pollution Control Board; 327 IAC 15-15-17*)

327 IAC 15-15-18 Storm Water Pollution Prevention Plan

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 18. (a) The owner or operator shall comply with the following:

(1) Develop a storm water pollution prevention plan.

- (2) Maintain the storm water pollution prevention plan in the operating record as required under section 17 of this rule.
- (3) Amend the storm water pollution prevention plan whenever:
 - (A) there is a change in design, construction, operation or maintenance at the facility that will have or has the potential to have a significant effect on the potential for the discharge of pollutants; or
 - (B) written notice is received from the commissioner stating that the storm water pollution prevention plan has proved to be ineffective in achieving the general objectives of controlling pollutants in storm water discharges.
- (b) The storm water pollution prevention plan shall:
 - (1) Give a description of clean water diversion used at the facility for the production area, and any area which is directly related to animal production including waste and feed storage;
 - (2) Describe and ensure implementation of practices to minimize and control pollutants in storm waste discharges associated with the following areas:
 - (A) Immediate access roads and rail lines used or traveled by carriers of raw materials, waste material, or by-products used or created by the facility.
 - (B) Refuse sites.
 - (C) Sites used for the storage and maintenance of material handling equipment.
 - (D) Shipping and receiving areas.
 - (3) Contain a monitoring plan that demonstrates the effectiveness of storm water pollution prevention practices. (*Water Pollution Control Board; 327 IAC 15-15-18*)

327 IAC 15-15-19 Closure of manure, litter, process wastewater storage structures

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 19. (a) A owner or operator that plans to close or discontinue the use of a manure, litter, process wastewater storage structure must comply with the following requirements, as applicable.

- (1) A manure, litter, process wastewater storage structure is deemed closed when the environmental threat has been removed.
- (2) The owner or operator that plans to temporarily discontinue use of a manure, litter, process wastewater storage structure must comply with this rule.

(b) Manure, litter, process wastewater storage structures that are temporarily shut down must be maintained in accordance with this rule. A manure, litter, or process wastewater storage structure that has been temporarily shut down for three (3) years must be cleaned out in accordance with this rule.

(c) The owner or operator that plans to close or discontinue use of a manure, litter, or process wastewater storage structure shall do the following:

- (1) Remove all manure, litter, or process wastewater from the storage structure prior to the expiration of the general permit. Until all manure, litter, or process wastewater is removed, the structure shall be maintained in accordance with this rule.
- (2) If the facility will not be completely closed, the owner or operator shall notify the department that the manure, litter, process wastewater storage structure is not to be completely closed and:
 - (A) provide information on the recalculated storage capacity for the facility; and
 - (B) must also notify the department:
 - (i) before demolishing or converting the use of any manure, litter, process wastewater storage structure; and
 - (ii) specify the intended future use of the manure, litter, process wastewater storage structure if the structure is to be converted to another use.

- (3) Land apply and manage all manure, litter, or process wastewater removed from the structure in accordance with this rule.
- (4) Remove all associated appurtenances, and conveyance structures from uncovered liquid manure, or process wastewater storage structures.
- (5) Submit a statement to the commissioner within thirty (30) days after completing the requirements in this section that certifies compliance with the requirements in this section.

(d) If deemed necessary to protect human health or the environment, the commissioner may require additional closure activities based on:

- (1) surface contamination;
- (2) evidence of leakage, seepage, or spills; or
- (3) other criteria necessary to the protection of human health or the environment.

(e) Adequate storage must be maintained to avoid land application when soil or weather conditions are unsuitable for land application or when land is occupied with crops and unavailable for land application. Land application is prohibited when soil or weather conditions are unsuitable for land application.

(Water Pollution Control Board; 327 IAC 15-15-19)

327 IAC 15-15-20 Removal from the permitting program

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 20. (a) This section applies to any permitted CAFO that qualifies for removal from the permitting program due to:

- (1) a reduction in the size of the facility based on the number of animals that is less than listed in the definition of Large CAFO under section 3 or this rule, unless the CAFO would still meet the definition of Medium CAFO after the reduction in number of animals;
- (2) a decision to cease operation and completely close the entire facility under section 19 of this rule; or
- (3) transfer of ownership of the facility.

(b) A permitted operation can not exit the permit program due to a reduction in the size of the facility based on the number of animals if the facility was designated as a CAFO, under 327 IAC 5-4-3, due to a discharge to waters of the state. The facility must remain in the program at least through the term of the permit, unless the facility ownership is transferred or completely closed under section 19 of this rule.

(c) A permitted operation may exit the permit program after the term of the permit expires if the department has received a request from the permittee to be removed from the program and the department has confirmed that the facility has and maintains fewer animals than the definition of Large CAFO under section 3 of this rule and has not had a discharge within the past five (5) years. The permittee must also demonstrate to the commissioner that there is no remaining potential for a discharge of manure, litter, or process wastewater that was generated while the operation was a CAFO, other than agricultural storm water from land application areas.

(d) If a facility being removed from the NPDES permit program will meet the definition of a confined feeding operation (CFO) under IC 13-11-2-40, the owner or operator must notify the department in writing prior to removal from the NPDES program that the facility still meets the definition of a CFO and is transitioning into the CFO program under 327 IAC 16. If the owner or operator does not notify the agency prior to removal from the NPDES permit program, the owner or operator must submit a new approval application under 327 IAC 16 to again operate a confined feeding operation. Coverage under the CFO program commences when the department receives the written notification and remains in effect for the duration of time the NPDES general permit would have been in effect but in no case longer than five (5) years.

(e) If ownership of the facility is transferred, the new owner must submit an NOI at least thirty (30) days prior to beginning operation at the facility, in accordance with section 5 of this rule.

(f) An owner or operator may exit the permit program due to a complete closure of the facility if the department has been notified that:

- (1) all livestock animals are removed from the site; and**
- (2) the owner or operator has demonstrated to the commissioner that there is no remaining potential for a discharge of manure, litter, or process wastewater that was generated while the operation was a CAFO, other than agricultural storm water from land application areas; and**
- (3) the owner or operator closes all manure storage structures in accordance with this rule.**

(g) The commissioner shall send the permittee a letter of confirmation when the department has verified that the requirements for closure under this rule have been met. (*Water Pollution Control Board; 327 IAC 15-15-20*)